IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1395 OF 2004

M/s.P.B.Moharir .. .. Appellant

Versus

The Maharashtra State Financial Corporation & Ors. .. .. Respondents

Mr.Rajiv Hardas h/f P.N.Joshi for appellant

CORAM : P.V.KAKADE, J.

DATE : 7TH JULY, 2005.

P.C.:

1. The appeal is preferred against the judgment and order passed by Ad-hoc Addl. District Judge, Nashik dated 21.1.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Senior Division, Nashik dated 13.11.2000 decreeing the suit directing that the defendant nos.1,2 and 3 shall pay the amount of Rs.1,65,319.45 jointly and severally along with proportionate costs as well as interest at the rate of 14% p.a. and defendant nos.4 and 5 shall pay

Rs.43,419/= jointly and severally to the plaintiff along with interest.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff is a Corporation established under State Financial Corporation Act, 1951 having its office at Nashik. The defendant no.1 was carrying on business of Transport of goods and applied for the loan to purchase one vehicle. The Respondent Nos.2 and 3 agreed to stand guarantors for loan taken by the defendant no.1. The defendant no.4 is a local agent and dealer of the vehicle supplier relying on whose quotation the loan was sanctioned. The defendant no.5 supplied the truck to the defendants.1. The quotation was issued by the defendant no.1 on behalf of the defendant no.5. The total amount required for purchase of the truck was quoted to be Rs.2,70,320/= and the loan of Rs.2,20,955/= was sanctioned and Rs.33,144/= to cover entry tax, Rs.8000/= for construction of the hood, Rs.1109/- for delivery charges and Rs.7112/= for RTO taxes and insurance premium were quoted in the quotation. The loan was accordingly sanctioned to defendant no.1.

Amount was paid to defendant no. 4 on instructions given by defendant no.1 that he was given delivery of vehicle from defendant no.4. The defendant no.1 failed to pay the instalments of the loan in time and therefore, the plaintiff Corporation proceeded to attach the hypothecated property sold it in auction. The plaintiff Corporation received the amount of Rs.61,000/= out of the auction sale and an amount of Rs.2,08,738.45 paise remained due against the defendants. The plaintiff Corporation came to know at the time of transfer of vehicle after auction sale of the amount entry taxes of Rs.38,000/= was not paid by the defendants and it was to be paid by the defendant nos.4 and 5. Therefore, it was shown in the account of defendant no.1 as remained payable and therefore, plaintiff Corporation filed the suit against the defendants for recovery of the amount with interest and other charges.

4. The defendants contested the suit denying the plaintiffs claim. It was the case of the appellant-defendant no.4 that he was not a dealer of the said vehicle, and therefore, the suit against him was not tenable and hence claimed for compensatory cost.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that in fact the appellant-defendant no.4 was the dealer of the vehicle and hence was liable to pay the amount of Rs.38,000/= along with interest as prayed for and decree against the defendants came to be passed. The appeal was carried to the District Court, Solapur. The learned Addl. District Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the findings recorded by the learned trial judge were legal and proper and therefore dismissed the appeal. Hence the present appeal.

5. At the outset it may be noted that the present appellant-defendant no.4 is a dealer against whom the decree was passed for the total amount of Rs.43,419/= along with interest thereon. The only defence which was offered by the appellant in both the courts below was that he was not a dealer of the concerned vehicle at the relevant time located at Nashik. However, the evidence on record shows that the appellant was the dealer of the said vehicle to whom the amount was paid by plaintiff-Corproation towards the price of the vehicle

and appellant was duty bound to pay the entry taxes of the vehicle in question. Suffice it to say that there is absolutely no substantial question of law involved in this appeal, and therefore, without further elaboration I hold that the appeal deserves to be dismissed.

6. Needless to mention that the appellant would have independent remedy for recovery of the said amount from the concerned defaulters, however, no relief can be claimed in this appeal by the appellant.

. In the result the appeal stands dismissed. Consequently the Civil Application No.1862 of 2004 also stands dismissed.

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